IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 07.12.2006

Coram

THE HONOURABLE MR. JUSTICE M. JAICHANDREN

WRIT PETITION No. 47437 of 2006

Natural Energy Processing Co.,
36, Wallajah Road,
Chennai 600 002. ... Petitioner

Vs.

1. The Income Tax Appellate Tribunal,
Chennai "B" Bench,
Rajaji Bhavan,
Besant Nagar,
Chennai 600 090.

2. The Deputy Commissioner of Income Tax,
Central Circle I (1),
Chennai 600 034. ... Respondents

Petition filed under Article 226 of the Constitution of India praying for the issue of a Writ of Certiorarified Mandamus to call for the records of the first respondent in I.TA No.1292/Mds/2000 and quash the order, dated 19.5.2006, and direct the first respondent to condone the delay in filing the appeal and hear the appeal on merits.

For petitioner : Mr.R.Sivaraman

For respondents : M/s.Pushyasitaraman

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O R D E R

This Writ Petition is filed for praying to issue a Writ of Certiorarified Mandamus to call for the records of the first respondent in I.TA No.1292/Mds/2000 and quash the order, dated 19.5.2006, and direct the first respondent to condone the delay in filing the appeal and hear the appeal on merits.

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2. Heard the learned counsel appearing for the petitioner as well as the learned counsel appearing for the respondents.

3. The learned counsel for the petitioner has stated that the appeal has been filed, on 28.7.2000, with a delay of 89 days. He has further submitted that the petitioner had also filed a petition for condonation of delay and the same was dismissed on the ground that there was no evidence to suggest that the assessee was not having even tribunal fee of Rs.10,000/- to pay.

4. The learned counsel for the petitioner has submitted that the petitioner has paid 50% of the total tax liability and therefore, the Tribunal may be directed to condone the delay and to take the appeal on file and to decide the same on merits. It is further submitted that the first respondent ought to have condoned the delay in filing the appeal and considered the appeal on merits, having regard to the law laid down by the Supreme Court in VEDABAI ALIAS VIJAYANTA BAI BABURAO PATIL Vs. SHANTARAM BABURAO PATIL AND OTHERS (2002) 253 ITR 798 (SC) on the exercise of power/discretion to condone the delay.

5. It is found that the petitioner has paid the 50% of the tax liability. In such circumstances the order, dated 19.5.2006, in I.T.A.No.1292/Mds/2000, is set aside and the 1st respondent is directed to condone the delay in filing the appeal and pass necessary orders, on merits and in accordance with law, expeditiously.

6. The Writ Petition is ordered accordingly. No costs.

cla

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

1. The Income Tax Appellate Tribunal,
Chennai "B" Bench,
Rajaji Bhavan,
Besant Nagar,
Chennai 600 090.

2. The Deputy Commissioner of Income Tax,
Central Circle I (1),
Chennai 600 034.

+one cc to M/s. Pushya Sitaraman, Advocate sr no. 60877
+ one cc to Mr. R. Sivaraman, Advocate sr no. 60900

GG(CO)
NM(03.01.07)

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